

AMENDED IN ASSEMBLY MAY 10, 2011

AMENDED IN ASSEMBLY APRIL 25, 2011

AMENDED IN ASSEMBLY APRIL 15, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 771

Introduced by Assembly Member Butler

February 17, 2011

An act to amend ~~Sections 1365 and~~ *Section* 1368 of, and to add Section 1368.2 to, the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 771, as amended, Butler. Common interest developments: requests for documents: fees.

The Davis-Stirling Common Interest Development Act requires an owner of a separate interest in a common interest development to provide specified documents to a prospective purchaser of that interest. Existing law requires a homeowners' association to provide these documents to the owner of the separate interest within 10 days of the mailing or delivery of the request, and limits the amount of fees charged for the provision of the documents to the association's actual costs to procure, prepare, and reproduce the requested documents.

This bill would require ~~the association to provide a statement describing the fees that may be charged to a seller to procure, prepare, reproduce, and deliver the documents. The bill would require that the association~~ *seller* also provide a copy of the specified minutes of the meetings of the association's board of directors ~~in this connection~~. This bill would also require an association ~~or an agent of the association~~ to

provide *to the seller* a written or electronic estimate of the fees that will be assessed ~~for the provision of~~ *to provide* the specified documents. The bill would permit the association ~~or association's agent to charge~~ *collect* a reasonable fee for procuring, preparing, reproducing, and delivering the requested documents and would prohibit charging additional fees for electronic delivery of documents. The bill would permit the association to contract with any person or entity ~~to facilitate compliance with specified requirements in this regard~~ *provide the documents on behalf of the association*, subject to the same standards required of the association. The bill would require the owner of a separate interest to also provide a form for billing disclosures, as specified, to a prospective purchaser, and would also require the association to provide this form, ~~at the owner's request to a recipient authorized by the owner of the separate interest.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 1365 of the Civil Code is amended to~~
2 ~~read:~~
3 ~~1365. Unless the governing documents impose more stringent~~
4 ~~standards, the association shall prepare and distribute to all of its~~
5 ~~members the following documents:~~
6 ~~(a) A pro forma operating budget, which shall include all of the~~
7 ~~following:~~
8 ~~(1) The estimated revenue and expenses on an accrual basis.~~
9 ~~(2) A summary of the association's reserves based upon the~~
10 ~~most recent review or study conducted pursuant to Section 1365.5,~~
11 ~~based only on assets held in cash or cash equivalents, which shall~~
12 ~~be printed in boldface type and include all of the following:~~
13 ~~(A) The current estimated replacement cost, estimated remaining~~
14 ~~life, and estimated useful life of each major component.~~
15 ~~(B) As of the end of the fiscal year for which the study is~~
16 ~~prepared:~~
17 ~~(i) The current estimate of the amount of cash reserves necessary~~
18 ~~to repair, replace, restore, or maintain the major components.~~
19 ~~(ii) The current amount of accumulated cash reserves actually~~
20 ~~set aside to repair, replace, restore, or maintain major components.~~

1 (iii) ~~If applicable, the amount of funds received from either a~~
2 ~~compensatory damage award or settlement to an association from~~
3 ~~any person or entity for injuries to property, real or personal, arising~~
4 ~~out of any construction or design defects, and the expenditure or~~
5 ~~disposition of funds, including the amounts expended for the direct~~
6 ~~and indirect costs of repair of construction or design defects. These~~
7 ~~amounts shall be reported at the end of the fiscal year for which~~
8 ~~the study is prepared as separate line items under cash reserves~~
9 ~~pursuant to clause (ii). Instead of complying with the requirements~~
10 ~~set forth in this clause, an association that is obligated to issue a~~
11 ~~review of their financial statement pursuant to subdivision (b) may~~
12 ~~include in the review a statement containing all of the information~~
13 ~~required by this clause.~~

14 (C) ~~The percentage that the amount determined for purposes of~~
15 ~~clause (ii) of subparagraph (B) equals the amount determined for~~
16 ~~purposes of clause (i) of subparagraph (B).~~

17 (D) ~~The current deficiency in reserve funding expressed on a~~
18 ~~per-unit basis. The figure shall be calculated by subtracting the~~
19 ~~amount determined for purposes of clause (ii) of subparagraph (B)~~
20 ~~from the amount determined for purposes of clause (i) of~~
21 ~~subparagraph (B) and then dividing the result by the number of~~
22 ~~separate interests within the association, except that if assessments~~
23 ~~vary by the size or type of ownership interest, then the association~~
24 ~~shall calculate the current deficiency in a manner that reflects the~~
25 ~~variation.~~

26 (3) ~~A statement as to all of the following:~~

27 (A) ~~Whether the board of directors of the association has~~
28 ~~determined to defer or not undertake repairs or replacement of any~~
29 ~~major component with a remaining life of 30 years or less,~~
30 ~~including a justification for the deferral or decision not to undertake~~
31 ~~the repairs or replacement.~~

32 (B) ~~Whether the board of directors of the association, consistent~~
33 ~~with the reserve funding plan adopted pursuant to subdivision (e)~~
34 ~~of Section 1365.5, has determined or anticipates that the levy of~~
35 ~~one or more special assessments will be required to repair, replace,~~
36 ~~or restore any major component or to provide adequate reserves~~
37 ~~therefor. If so, the statement shall also set out the estimated amount,~~
38 ~~commencement date, and duration of the assessment.~~

39 (C) ~~The mechanism or mechanisms by which the board of~~
40 ~~directors will fund reserves to repair or replace major components,~~

1 including assessments, borrowing, use of other assets, deferral of
2 selected replacements or repairs, or alternative mechanisms.

3 (D) Whether the association has any outstanding loans with an
4 original term of more than one year, including the payee, interest
5 rate, amount outstanding, annual payment, and when the loan is
6 scheduled to be retired.

7 (4) A general statement addressing the procedures used for the
8 calculation and establishment of those reserves to defray the future
9 repair, replacement, or additions to those major components that
10 the association is obligated to maintain. The report shall include,
11 but need not be limited to, reserve calculations made using the
12 formula described in paragraph (4) of subdivision (b) of Section
13 1365.2.5, and may not assume a rate of return on cash reserves in
14 excess of 2 percent above the discount rate published by the Federal
15 Reserve Bank of San Francisco at the time the calculation was
16 made.

17 The summary of the association's reserves disclosed pursuant
18 to paragraph (2) shall not be admissible in evidence to show
19 improper financial management of an association, provided that
20 other relevant and competent evidence of the financial condition
21 of the association is not made inadmissible by this provision.

22 Notwithstanding a contrary provision in the governing
23 documents, a copy of the operating budget shall be annually
24 distributed not less than 30 days nor more than 90 days prior to
25 the beginning of the association's fiscal year.

26 (b) Commencing January 1, 2009, a summary of the reserve
27 funding plan adopted by the board of directors of the association,
28 as specified in paragraph (4) of subdivision (e) of Section 1365.5.
29 The summary shall include notice to members that the full reserve
30 study plan is available upon request, and the association shall
31 provide the full reserve plan to any member upon request.

32 (c) A review of the financial statement of the association shall
33 be prepared in accordance with generally accepted accounting
34 principles by a licensee of the California Board of Accountancy
35 for any fiscal year in which the gross income to the association
36 exceeds seventy-five thousand dollars (\$75,000). A copy of the
37 review of the financial statement shall be distributed within 120
38 days after the close of each fiscal year.

39 (d) Instead of the distribution of the pro forma operating budget
40 required by subdivision (a), the board of directors may elect to

1 ~~distribute a summary of the pro forma operating budget to all of~~
2 ~~its members with a written notice that the pro forma operating~~
3 ~~budget is available at the business office of the association or at~~
4 ~~another suitable location within the boundaries of the development,~~
5 ~~and that copies will be provided upon request and at the expense~~
6 ~~of the association. If any member requests that a copy of the pro~~
7 ~~forma operating budget required by subdivision (a) be mailed to~~
8 ~~the member, the association shall provide the copy to the member~~
9 ~~by first-class United States mail at the expense of the association~~
10 ~~and delivered within five days. The written notice that is distributed~~
11 ~~to each of the association members shall be in at least 10-point~~
12 ~~boldface type on the front page of the summary of the budget.~~

13 ~~(e) A statement describing the association's policies and~~
14 ~~practices in enforcing lien rights or other legal remedies for default~~
15 ~~in payment of its assessments against its members shall be annually~~
16 ~~delivered to the members not less than 30 days nor more than 90~~
17 ~~days immediately preceding the beginning of the association's~~
18 ~~fiscal year.~~

19 ~~(f) (1) A summary of the association's property, general~~
20 ~~liability, earthquake, flood, and fidelity insurance policies, which~~
21 ~~shall be distributed not less than 30 days nor more than 90 days~~
22 ~~preceding the beginning of the association's fiscal year, that~~
23 ~~includes all of the following information about each policy:~~

24 ~~(A) The name of the insurer.~~

25 ~~(B) The type of insurance.~~

26 ~~(C) The policy limits of the insurance.~~

27 ~~(D) The amount of deductibles, if any.~~

28 ~~(2) The association shall, as soon as reasonably practicable,~~
29 ~~notify its members by first-class mail if any of the policies~~
30 ~~described in paragraph (1) have lapsed, been canceled, and are not~~
31 ~~immediately renewed, restored, or replaced, or if there is a~~
32 ~~significant change, such as a reduction in coverage or limits or an~~
33 ~~increase in the deductible, as to any of those policies. If the~~
34 ~~association receives any notice of nonrenewal of a policy described~~
35 ~~in paragraph (1), the association shall immediately notify its~~
36 ~~members if replacement coverage will not be in effect by the date~~
37 ~~the existing coverage will lapse.~~

38 ~~(3) To the extent that any of the information required to be~~
39 ~~disclosed pursuant to paragraph (1) is specified in the insurance~~
40 ~~policy declaration page, the association may meet its obligation~~

1 to disclose that information by making copies of that page and
2 distributing it to all of its members.

3 (4) The summary distributed pursuant to paragraph (1) shall
4 contain, in at least 10-point boldface type, the following statement:
5 “This summary of the association’s policies of insurance provides
6 only certain information, as required by subdivision (f) of Section
7 1365 of the Civil Code, and should not be considered a substitute
8 for the complete policy terms and conditions contained in the actual
9 policies of insurance. Any association member may, upon request
10 and provision of reasonable notice, review the association’s
11 insurance policies and, upon request and payment of reasonable
12 duplication charges, obtain copies of those policies. Although the
13 association maintains the policies of insurance specified in this
14 summary, the association’s policies of insurance may not cover
15 your property, including personal property or, real property
16 improvements to or around your dwelling, or personal injuries or
17 other losses that occur within or around your dwelling. Even if a
18 loss is covered, you may nevertheless be responsible for paying
19 all or a portion of any deductible that applies. Association members
20 should consult with their individual insurance broker or agent for
21 appropriate additional coverage.”

22 (g) A statement describing the fees that may be charged to a
23 seller to procure, prepare, reproduce, and deliver documents
24 pursuant to the requirements of Section 1368, accompanied by a
25 form compiled pursuant to Section 1368.2. A new statement and
26 form shall be provided when the fees or required information
27 changes.

28 SEC. 2.

29 SECTION 1. Section 1368 of the Civil Code is amended to
30 read:

31 1368. (a) The owner of a separate interest, other than an owner
32 subject to the requirements of Section 11018.6 of the Business and
33 Professions Code, shall, as soon as practicable before transfer of
34 title to the separate interest or execution of a real property sales
35 contract therefor, as defined in Section 2985, provide the following
36 to the prospective purchaser:

37 (1) A copy of the governing documents of the common interest
38 development, including any operating rules, and including a copy
39 of the association’s articles of incorporation, or, if not incorporated,

1 a statement in writing from an authorized representative of the
2 association that the association is not incorporated.

3 (2) If there is a restriction in the governing documents limiting
4 the occupancy, residency, or use of a separate interest on the basis
5 of age in a manner different from that provided in Section 51.3, a
6 statement that the restriction is only enforceable to the extent
7 permitted by Section 51.3 and a statement specifying the applicable
8 provisions of Section 51.3.

9 (3) A copy of the most recent documents distributed pursuant
10 to Section 1365.

11 (4) A true statement in writing obtained from an authorized
12 representative of the association as to the amount of the
13 association's current regular and special assessments and fees, any
14 assessments levied upon the owner's interest in the common
15 interest development that are unpaid on the date of the statement,
16 and any monetary fines or penalties levied upon the owner's
17 interest and unpaid on the date of the statement. The statement
18 obtained from an authorized representative shall also include true
19 information on late charges, interest, and costs of collection which,
20 as of the date of the statement, are or may be made a lien upon the
21 owner's interest in a common interest development pursuant to
22 Section 1367 or 1367.1.

23 (5) A copy or a summary of any notice previously sent to the
24 owner pursuant to subdivision (h) of Section 1363 that sets forth
25 any alleged violation of the governing documents that remains
26 unresolved at the time of the request. The notice shall not be
27 deemed a waiver of the association's right to enforce the governing
28 documents against the owner or the prospective purchaser of the
29 separate interest with respect to any violation. This paragraph shall
30 not be construed to require an association to inspect an owner's
31 separate interest.

32 (6) A copy of the preliminary list of defects provided to each
33 member of the association pursuant to Section 1375, unless the
34 association and the builder subsequently enter into a settlement
35 agreement or otherwise resolve the matter and the association
36 complies with Section 1375.1. Disclosure of the preliminary list
37 of defects pursuant to this paragraph does not waive any privilege
38 attached to the document. The preliminary list of defects shall also
39 include a statement that a final determination as to whether the list
40 of defects is accurate and complete has not been made.

(7) A copy of the latest information provided for in Section 1375.1.

(8) Any change in the association's current regular and special assessments and fees which have been approved by the association's board of directors, but have not become due and payable as of the date disclosure is provided pursuant to this subdivision.

(9) A copy of the most recent 12 months of minutes of the *regular* meetings of the association's board of directors that were approved by the association's board of directors.

(b) (1) Upon written request, the association shall, within 10 days of the mailing or delivery of the request, provide the owner of a separate interest, or any other recipient authorized by the owner, with a copy of the requested documents specified in paragraphs (1) to (9), inclusive, of subdivision (a). Upon receipt of a written request, the association shall provide a written or electronic estimate of the fees that will be assessed for providing the requested documents. The documents required to be made available pursuant to this section may be maintained in electronic form, and may be posted on the association's Internet Web site. Requesting parties shall have the option of receiving the documents by electronic transmission if the association maintains the documents in electronic form. ~~The association or the association's agent~~ may collect a reasonable fee for the procurement, preparation, reproduction, and delivery of the documents requested pursuant to the provisions of this section.

(2) No additional fees may be charged by the association for the electronic delivery of the documents requested.

(3) Fees for any documents required by this section shall be distinguished from other fees, fines, or assessments billed as part of the transfer or sales transaction. Delivery of the documents required by this section shall not be conditioned upon, or required to be combined with, any other documents, items, or services.

(4) An association may contract with any person or entity to facilitate compliance with the requirements of this subdivision on behalf of the association, subject to the same standards required of the association.

(5) The association shall also provide a recipient authorized by the owner of a separate interest with a copy of the completed form

1 specified in Section 1368.2 at the time the required documents are
2 delivered.

3 (c) (1) Except as provided in paragraph (2), neither an
4 association nor a community service organization or similar entity
5 may impose or collect any assessment, penalty, or fee in connection
6 with a transfer of title or any other interest except for the following:

7 (A) An amount not to exceed the association's actual costs to
8 change its records.

9 (B) An amount authorized by subdivision (b).

10 (2) The prohibition in paragraph (1) does not apply to a
11 community service organization or similar entity, or to a nonprofit
12 entity that provides services to a common interest development
13 under a declaration of trust, that is described in subparagraph (A)
14 or (B):

15 (A) The community service organization or similar entity
16 satisfies both of the following requirements:

17 (i) The community service organization or similar entity was
18 established prior to February 20, 2003.

19 (ii) The community service organization or similar entity exists
20 and operates, in whole or in part, to fund or perform environmental
21 mitigation or to restore or maintain wetlands or native habitat, as
22 required by the state or local government as an express written
23 condition of development.

24 (B) The community service organization or similar entity, or a
25 nonprofit entity that provides services to a common interest
26 development under a declaration of trust, satisfies all of the
27 following requirements:

28 (i) The organization or entity is not an organization or entity
29 described in subparagraph (A).

30 (ii) The organization or entity was established and received a
31 transfer fee prior to January 1, 2004.

32 (iii) On and after January 1, 2006, the organization or entity
33 offers a purchaser the following payment options for the fee or
34 charge it collects at time of transfer:

35 (I) Paying the fee or charge at the time of transfer.

36 (II) Paying the fee or charge pursuant to an installment payment
37 plan for a period of not less than seven years. If the purchaser
38 elects to pay the fee or charge in installment payments, the
39 organization or entity may also collect additional amounts that do
40 not exceed the actual costs for billing and financing on the amount

owed. If the purchaser sells the separate interest before the end of the installment payment plan period, he or she shall pay the remaining balance prior to transfer.

(3) For the purposes of this subdivision, a “community service organization or similar entity” means a nonprofit entity, other than an association, that is organized to provide services to residents of the common interest development or to the public in addition to the residents, to the extent community common areas or facilities are available to the public. A “community service organization or similar entity” does not include an entity that has been organized solely to raise moneys and contribute to other nonprofit organizations that are qualified as tax exempt under Section 501(c)(3) of the Internal Revenue Code and that provide housing or housing assistance.

(d) Any person or entity who willfully violates this section is liable to the purchaser of a separate interest that is subject to this section for actual damages occasioned thereby and, in addition, shall pay a civil penalty in an amount not to exceed five hundred dollars (\$500). In an action to enforce this liability, the prevailing party shall be awarded reasonable attorneys’ fees.

(e) Nothing in this section affects the validity of title to real property transferred in violation of this section.

(f) In addition to the requirements of this section, an owner transferring title to a separate interest shall comply with applicable requirements of Sections 1133 and 1134.

(g) For the purposes of this section, a person who acts as a community association manager is an agent, as defined in Section 2297, of the association.

~~(h) For purposes of this section “agent of the association” means any person or entity providing the items for, or acting on behalf of, the association pursuant to the requirements of this section.~~

~~SEC. 3.~~

SEC. 2. Section 1368.2 is added to the Civil Code, to read:

1368.2. The form for billing disclosures required by Section 1368 shall be in substantially the following form:

CHARGES FOR DOCUMENTS PROVIDED AS REQUIRED BY SECTION

1368

Property Address _____

Owner of Property _____
 Owner's Mailing Address _____
 (If known or different from property address.)

Provider of the Section 1368 Items:

Print Name Position or Title Association or Agent Date Form Completed

Check or Complete Applicable Column *or Columns* Below

Document	Civil Code Section	Included	Not Available (N/A) or Not Applicable (N/App)	Fees
Articles of Incorporation or statement that not incorporated	Section 1368(a)(1)	_____	_____	_____
CC&Rs	Section 1368(a)(1)	_____	_____	_____
Bylaws	Section 1368(a)(1)	_____	_____	_____
Operating Rules	Section 1368(a)(1)	_____	_____	_____
Age restrictions, if any	Section 1368(a)(2)	_____	_____	_____
Pro forma operating budget or summary, including reserve study	Sections 1365 and 1368(a)(3)	_____	_____	_____
Assessment and reserve funding disclosure summary	Sections 1365 and 1368(a)(4)	_____	_____	_____
Financial statement review	Sections 1365 and 1368(a)(3)	_____	_____	_____
Assessment enforcement policy	Sections 1365 and 1368(a)(4)	_____	_____	_____
Insurance summary	Sections 1365 and 1368(a)(3)	_____	_____	_____

1	Regular assessment	Section	_____	_____	_____
2		1368(a)(4)			
3	Special assessment	Section	_____	_____	_____
4		1368(a)(4)			
5	Emergency assessment	Section	_____	_____	_____
6		1368(a)(4)			
7	Other unpaid	Sections 1367.1	_____	_____	_____
8	obligations of seller	and 1368(a)(4)			
9	Approved changes to	Section 1365 and	_____	_____	_____
10	assessments	1368(a)(4), (8)			
11	Settlement notice	Sections	_____	_____	_____
12	regarding common area	1368(a)(6), (7)			
13	defects	and 1375.1			
14	Preliminary list of	Sections	_____	_____	_____
15	defects	1368(a)(6), 1375,			
16		and 1375.1			
17	Notice(s) of violation	Sections 1363	_____	_____	_____
18		and 1368(a)(5)			
19	Required statement of	Sections 1365(g)	=====	=====	=====
20	fees	and 1368			
21	Most recent 12	Section	=====	=====	=====
22	mo./minutes	1368(a)(9)			
23	<i>Required statement of</i>	<i>Section 1368</i>	_____	_____	_____
24	<i>fees</i>				
25	<i>Most recent 12 months</i>	<i>Section</i>	_____	_____	_____
26	<i>of minutes</i>	<i>1368(a)(9)</i>			
27					